Chapter A6: Staying

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Chapter A6: Staying

Staying where an appeal is pending before a Court in another case

Stayed decisions

A6001 The decision maker may decide not to make a decision[1] where an appeal is pending before a Court in another case if the decision maker is considering

1. determining an application for benefit or credits

2. revising a claim to benefit

3. superseding a claim to benefit **and**

4. is aware that there is an appeal pending before a court in another case **and**

5. that the outcome of the appeal may affect the decision in some way.

1 SS (NI) Order 98, art 25(5)

A6002 The case on appeal at a Court is known as the lead case. The case that is stayed is known as the look-alike case.

A6003 – A6009

When is an appeal pending

A6010 An appeal is pending where[1]

1. an appeal has been made, but has not yet been decided **or**

2. an application for leave to appeal has been made, but a decision on whether leave is to be granted has not yet been made **or**

3. the time limit has not expired for making[2]

3.1 an appeal where an application for leave to appeal has been granted, but the appeal has not yet been made **or**

3.2 an application for leave to appeal **and**

4. the Department certifies in writing that he is considering an appeal against a decision **and**

5. the decision maker considers that such an appeal may affect the decision in the look-alike case.

1 SS (NI) Order 98, art 25(5); 2 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 52(2)

A6011 Decision Making Services will identify lead case appeals that are pending and will issue notifications detailing the point of law in dispute and the type of benefits which are affected by the decision. The Department will issue a certificate when considering an appeal.

A6012 – A6029

Which courts are involved

A6030 The courts before which relevant applications for permission to appeal or appeals can be pending are

1. the High Court

2. the High Court in Northern Ireland

3. the Court of Appeal (England and Wales)

4. the Court of Session (Scotland)

5. the Court of Appeal in Northern Ireland

6. the Supreme Court

7. the European Court of Justice.

Cases where the decision maker should stay making a decision

A6031 The decision maker may stay making a decision[1], because an appeal is pending in another case, when considering

1. a claim to benefit **or**

2. an application for credits **or**

3. revising or superseding an existing award of benefit or credits

and the decision maker considers that the effect of the likely outcome of the appeal is that there would be no entitlement to benefit or credits or the likely result of the appeal would affect the benefit decision or credits in some other way[2].

1 SS (NI) Order 98, art 25(2); 2 art 25(2) & (3)(a)

A6032 – A6039

Staying decisions where the likely outcome of the lead case would result in no entitlement to benefit or credits

A6040 If the outcome of the lead case is possible to mean that there would be no entitlement to benefit or credits, the decision maker will stay the decision until the outcome of the lead case is known[1].

1 SS (NI) Order 98, art 25(2)

A6041 In exceptional circumstances, a decision maker may decide cases where staying would otherwise be appropriate. This is where the claimant would suffer hardship as a result of staying the decision. For example where

1. the amount of benefit involved is likely to be significant **or**

2. the lead case will not be resolved for some considerable time.

For advice on issues to be taken into account when considering hardship - see benefit specific guidance.

A6042 – A6049

Staying where the likely outcome of the lead cases would affect the benefit decision in some other way

A6050 In deciding whether the lead case will affect the decision in some other way, the decision maker must determine the claim or application as if the lead cases had already been decided and that the outcome was most unfavourable to the claimant[1].

1 SS (NI) Order 98, art 25(3)(b); UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 52(1)

Example

The lead case concerns the payment of the carer element. A decision maker has before him a look-alike case that involves the same element. Using staying provisions he identifies that even if the lead case were decided in most unfavourable terms, the claimant would be entitled to a standard allowance, but not the element. Only the payment of the element is in doubt.

The decision maker decides and awards the standard allowance. The decision on the carer element will be stayed until the lead case is decided.

A6051 – A6059

Stayed appeals

A6060 The arrangements for staying also apply to look-alike appeals that depend on the outcome of a lead case on appeal to the Courts. Guidance at A6010 also applies in terms of when an appeal is pending in these circumstances[1].

1 SS (NI) Order 98, art 26(6); UC, PIP, JSA & ESA (D&A) Regs (NI) 16, reg 52(1)

A6061 The Department can direct a tribunal or Commissioner not to hear a look-alike appeal. In these cases the appeal is returned to the decision maker to hold pending the outcome of the lead case[1].

1 SS (NI) Order 98, art 26(2)

A6062 Where the Department decides that the look-alike appeal should not be returned the tribunal or Commissioner may

1. stay the decision on the look-alike case pending the outcome of the lead case **or**

2. where it is in the interests of the claimant, determine the look-alike case as if the lead case had been decided in the most unfavourable terms for the claimant[1].

1 SS (NI) Order 98, art 26(4)

A6063 – A6069

Look-alike appeals not yet lodged with The Appeals Service

A6070 Appeals officers should check all submissions for potential look-alike appeals. Where a look-alike appeal is identified the appeals officer will refer the appeal response to The Appeals Service in the normal way and note the AT38 asking for the appeal hearing to be deferred pending the decision on the lead case. The Appeals Service will notify all parties to the proceedings if the hearing is deferred. This guidance applies to cases where

1. the outcome of the lead case is likely to mean that there will be no entitlement to benefit

2. the issue or issues raised in the look-alike appeal relate wholly to the point(s) of law in dispute in the lead case **or**

3. the additional issues raised in the appeal are non-appealable decisions.

A6071 – A6074

Look-alike appeals already lodged with The Appeals Service

A6075 The Department will send The Appeals Service and the Commissioners' Office a copy of the lead case certificates. Separate arrangements have been agreed with The Appeals Service for the handling of look-alike appeals that have already been lodged with them. (See Code of Appeal Procedures Guide Chapter 4.)

A6076 – A6079

What happens if the claimant challenges the decision to stay a look-alike claim or appeal

A6080 There is no right of appeal against a decision to stay a look-alike claim or a look-alike appeal[1].

1 UC, PIP, JSA & ESA (D&A) Regs (NI) 16, Sch 3, para 7

A6081 The decision maker can reconsider the decision in the light of all the available facts that may be presented by the claimant, and if appropriate make a decision on the case (see A6041 for guidance on hardship).

A6082 – A6084

What happens when the lead case is decided

A6085 Decision Making Services will notify the outcome of the lead case.

A6086 Claimants might approach the decision maker for a decision on their stayed appeal immediately following the Court's decision. Decision makers should not take any action to decide the stayed case until they have received formal notification and guidance on the outcome of the lead case.

A6087 – A6089

Action by decision makers

A6090 Decision makers should identify all look-alike cases and appeals returned to them by The Appeals Service.

A6091 Decision makers decide the claim where the decision was stayed in full.

A6092 Where the lead case has been decided in a way which changes the interpretation of the law, decision makers should revise or supersede the decision[1]. The decision will be revised where

1. only part of the decision was stayed[2]

2. the appeals officer decided not to forward a look-alike appeal to The Appeals Service

3. The Appeals Service returned a look-alike appeal on the request of the decision maker (see ADM Chapter A3 for guidance on revision).

1 SS (NI) Order 98, art 25(4); 2 art 26(3)

A6093 Where the look-alike appeal was forwarded to The Appeals Service and they decided the appeal, the decision maker should supersede the decision[1] (see ADM Chapter A4 for guidance on supersession).

1 SS (NI) Order 98, art 26(5)

A6094 Decision Making Services will give guidance following the determination of lead cases on whether revision or supersession is required.

A6095 – A6999